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EXAMINER

CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

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Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/733,148	<b>Applicant(s)</b> ADEMA, PETER	
	<b>Examiner</b> Melvin A. Cartagena	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 27-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 27-32 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-26, drawn to a system for dispensing metered portions of substances, classified in class 222, subclass 144.
  - II. Claims 27-32, drawn to a self closing valve assembly, classified in class 222, subclass 321.2.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the dispensing units can use any other type of valve such as a ball valve. The subcombination has separate utility such as pre-compression pump used to dispense a detergent solution.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Adam Sacharoff on August 2, 2005 a provisional election was made without traverse to prosecute the invention of I, claims 1-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-32 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-6 and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,938,080 to Haaser et al.

Haaser shows a dispensing apparatus for pigments as seen in Figs. 1-3, 5 and 7, having a frame with a base 82 and upright supports 84, a frame spindle 90, a rotatable magazine 52 with drive means 58, receiving stations 112, storage containers 60 with pumps 126, a dispensing station 96, a collection container 72, pump housings 62, a telescopically displaceable pump component 136, pump actuating means 124, closure wall 132, dispensing nozzle 151, valves 138 and programmable controller 76.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. in view of US 4,967,938 to Hellenberg.

Haaser shows all claimed features as discussed above but is silent about the drive means being a stepper motor. Hellenberg shows a paint dispensing apparatus with a rotatable magazine 44 driven by a stepper motor 268. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Haaser to include a stepper motor to drive the magazine as taught by Hellenberg to make the magazine controllable in opposite directions of rotation.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. in view of US 5,505,777 to Cierdella et al.

Haaser shows all claimed features as discussed above but is silent about a pivoting arm secured at one end to a horizontal pin fixed in a base plate to actuate the pump. Cierdella shows a computer-controlled dispenser with a pivoting arm 106 secured to one end to a horizontal pin 108 fixed to the base 98 to actuate the pump. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Haaser to include a pivoting arm to actuate the pump as taught by Cierdella to provide a computer controlled system for rapidly dispense material without wetting.

10. Claims 13-18, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. in view of US 4,331,262 to Snyder et al.

Haaser shows all claimed features as discussed above except for the use of an optical sensor to monitor the volume of the containers. Snyder shows a fluid dispenser using an optical sensor 21 and a light source 19 to monitor the volume in a receiver transparent container 16. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Haaser to include optical sensors to monitor the volume of the

product containers as taught by Snyder to maintain the system actualized on the amount of material left in the containers.

The recitation in claim 13, “for the purpose of making a hair-dye mixture” has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

11. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. as modify by US 4,331,262 to Snyder et al. as applied to claim 13 above, and further in view of US 6,183,077 to Hmelar et al.

The Haaser-Snyder combination claimed all features as discussed above except for a container with keys to identify the content of the container. Hmelar shows an apparatus with keyed ink container 131 to identify the content of the container. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Haaser-Snyder combination to include keys in the container as taught by Hmelar to provide the system with the correct parameters and quick electronic identification of the content of the container.

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. as modify by US 4,331,262 to Snyder et al. as applied to claim 13 above, and further in view of US 4,967,938 to Hellenberg.

The Haaser-snyder combination claimed all features as discussed above except for means for stirring the product in the containers. Hellenberg shows a dispensing apparatus with stirring

means 56 to stir the content of the container. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Haaser-snyder combination to include a stirring device to assure each colorant in each container is thoroughly mix to maintain uniformity from one mix batch to the next.

13. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,938,080 to Haaser et al. in view of US 6,021,362 to Maggard et al.

Haaser shows all claimed features as discussed above except for wireless communication between the electronic components. Maggard shows a dispensing apparatus using wireless communication. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use wireless communication between the electronic components as taught by Maggard to increased the device portability.

The recitation in claim 24, "for the purpose of making a hair-dye mixture" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hellenberg ('211) shows a method of dispensing material. Edstrom shows a dual pump colorant dispenser.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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